

6745-13  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded

SEP 22 1972 - 10 40 AM

STATE COMMERCE COMMISSION

---

---

## Lease of Railroad Equipment

Dated as of August 15, 1972

---

between

BANKERS TRUST COMPANY, as Trustee,  
*Lessor*

and

ST. LOUIS REFRIGERATOR CAR COMPANY,  
*Lessee*

**LEASE OF RAILROAD EQUIPMENT**, dated as of August 15, 1972, between Bankers Trust Company, as Trustee under a Trust Agreement (hereinafter called "Trust Agreement" and said Trustee, together with its successors and assigns, being hereinafter called "Lessor") dated as of August 15, 1972, with General Electric Credit Corporation (hereinafter, together with its successors and assigns, called "Trustor") and St. Louis Refrigerator Car Company, an unincorporated common law trust (hereinafter called "Lessee").

WHEREAS, Lessor and Lessee have entered into a Conditional Sale Agreement dated as of August 15, 1972 (hereinafter called "Conditional Sale Agreement"), with Fruit Growers Express Company (hereinafter called "Manufacturer"), wherein Manufacturer has agreed to manufacture, sell and deliver to Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, Manufacturer has assigned or will assign its interest in the Conditional Sale Agreement to Mercantile-Safe Deposit and Trust Company, as Agent (hereinafter, together with its successors and assigns, called "Vendor") pursuant to an Agreement and Assignment dated as of August 15, 1972 between Manufacturer and Vendor (hereinafter called "Assignment"); and

WHEREAS, Lessee desires to lease all the units described in Schedule A hereto, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreement on or prior to April 30, 1973 (hereinafter called the "Leased Property"), at the rentals and for the terms and upon the conditions hereinafter provided.

**SECTION 1. *Lease of Property; Term.*** Lessor agrees to deliver and lease to Lessee the Leased Property to be purchased by Lessor from Manufacturer under the Conditional Sale Agreement and described in Schedule A hereto; provided, however, that no unit of the Leased Property may be delivered and leased hereunder later than April 30, 1973. Lessor will cause each unit of the Leased Property to be delivered to Lessee at such place as may be designated by Lessee in St. Louis, Missouri. Upon such delivery, Lessee will cause one or more employees of Lessee, as the authorized representative or representatives of Lessee, to inspect and accept delivery of each unit of the Leased Property pursuant to this Lease, and Lessee will deliver to Lessor a Certificate of Acceptance in the form of Exhibit A to this Lease, where-

upon the Leased Property shall be deemed to have been delivered to and accepted by Lessee and will be subject thereafter to all the terms and conditions of this Lease. Lessee hereby agrees that the execution of the Certificate of Acceptance for any unit of the Leased Property by such employee or employees on behalf of Lessee shall, without further act, irrevocably constitute acceptance by Lessee of the Leased Property for all purposes of this Lease. The lease term for any unit of the Leased Property shall commence on the date of the Certificate of Acceptance for such unit and shall end on the date fifteen (15) years after the commencement date of the base term, both dates inclusive, unless this Lease is earlier terminated as provided herein.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Leased Property, upon default by Lessee hereunder, are subject to the rights of Vendor under the Conditional Sale Agreement. If an event of default should occur under the Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease.

SECTION 2. *Rent.* (a) Lessee shall pay Lessor as interim rent for each unit of the Leased Property subject to this Lease for the period from and including the date of acceptance of such unit to (but not including) the commencement date of the base term of this Lease, at the rate of \$6.23 per day for each unit of the Leased Property for each day during such period. The interim rent for each unit shall be payable on April 30, 1973.

(b) Lessee shall pay Lessor base rent for each unit of the Leased Property subject to this Lease for the period from and including the commencement date of the base term to and including the end of the base term for such unit, in sixty (60) equal quarterly installments, in arrears, each in an amount of 2.351821% of the Lessor's Cost for each unit. The term "Lessor's Cost" as used in this Lease shall mean the actual purchase price for such unit of the Leased Property payable to Manufacturer in accordance with the terms of the Conditional Sale Agreement. The base rent shall be due and payable on the last day of the first quarter of the base term and on the same day of each of the next succeeding fifty-nine (59) quarters. The commencement date of the base term of this Lease shall be May 1, 1973.

SECTION 3. *Payment of Rent.* Lessor irrevocably instructs Lessee to make, and Lessee agrees to make, all the payments provided for in this Lease in immediately available Baltimore funds (including but not limited to the payments required under Section 12 hereof) for the account of Lessor, c/o Mercantile-Safe Deposit and Trust Company, Two Hopkins Plaza, Baltimore, Maryland 21201, attention Corporate Trust Department on or before 11 a.m. Baltimore time on the date upon which payments are due and payable. Such payments shall be applied by Vendor to satisfy the obligations of Lessor under the Conditional Sale Agreement subject to the limitations set forth in the last paragraph of Article 3 thereof and any balance shall be paid promptly to Lessor at its offices at P. O. Box 318, Church Street Station, New York, N. Y. 10015, attention Corporate Trust Division. Any rental payment not paid when due shall be subject, to the extent legally enforceable, to a late charge equal to 9% per annum of the overdue rentals for the period of time during which such rentals are overdue or such lesser amount as may be legally enforceable. This Lease is a net lease and Lessee's obligations to pay all rent payable hereunder shall be absolute and unconditional and all such rent shall be paid notwithstanding any circumstances, including, without limitation (i) any matters of abatement, set-off, counterclaim, recoupment, defense or other right which Lessee may have against Lessor, Manufacturer or Vendor or anyone else for any reason whatsoever, (ii) any defect in the title, compliance with specifications, condition, design, operation, or fitness for use of, or, except as provided in Section 12 hereof, any damage to or loss or destruction of, any unit of the Leased Property or an interruption or cessation in the use or possession thereof by Lessee for any reason whatsoever, or (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. Each rent payment made by Lessee shall be final and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

SECTION 4. *Identification Marks.* Lessee shall keep each unit of the Leased Property numbered with the identifying number indicated in

Schedule A hereto and as set forth in the Certificate of Acceptance for such unit and shall keep each side of each such unit plainly, distinctly, permanently and conspicuously marked, in letters not less than one inch in height, with the name of Vendor followed by the words "Agent-Secured Party" or other appropriate words designated by Lessor or Vendor, and make changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor or Vendor to the Leased Property and their rights under this Lease. Lessee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. Lessee will not change the numbers of any such units except in accordance with a statement of new numbers to be substituted therefor, which statement shall have been previously filed with Lessor and Vendor and filed, recorded or deposited with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and in all other public offices where this Lease shall have been filed, recorded or deposited. The cost of marking any change in the numbers of any unit of the Leased Property shall be borne by Lessee. Except as otherwise provided in this Section 4, Lessee will not allow the name of any person, association or corporation to be placed on the Leased Property as a designation which might be interpreted as a claim of ownership; provided, however, that Lessee may cause the Leased Property to be lettered with the name, emblem or initials of Lessee or of a subsidiary or affiliated company controlling or controlled by Lessee (or of any sub-lessee if the sublease shall be permitted under this Lease).

SECTION 5. *Maintenance, Operation and Repairs.* Lessee agrees for the benefit of Lessor and Vendor, that Lessee, at its own cost and expense, shall maintain, service and repair each unit of the Leased Property to the same extent as Lessee would, in the prudent management of its properties, maintain, service and repair similar equipment owned by Lessee and in any event to the extent required to maintain such equipment in good operating condition (ordinary wear and tear excepted) and in compliance with any applicable requirements of law or of any federal, state or local governmental authority having jurisdiction, including, but not limited to (i) the interchange rules of the

Association of American Railroads and (ii) all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Leased Property. Lessee will not permit any unit to be used or operated in violation of any law or any rule, regulation or order of any such governmental authority having jurisdiction, unless the validity thereof is being contested in good faith and by appropriate proceedings, but only so long as such proceedings, in the reasonable opinion of Lessor, do not involve any danger of the sale, forfeiture or loss of any unit or interest therein. In case any additional or other equipment or appliance on any unit of the Leased Property shall be required to be installed on any such unit in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such additions and replacements at its own expense.

Lessee will make and be responsible for any and all replacements, repairs or substitutions of parts of the Leased Property required to keep the Leased Property in such good operating condition. All replacements and repairs shall become the property of Lessor, as shall all additions if not removable without impairing the value of the Leased Property. Without the prior written consent of Lessor, Lessee shall not alter or improve the Leased Property. Lessee will bear all costs incurred in connection with the use and operation of the Leased Property including, but not limited to, labor, material, energy or supplies.

**SECTION 6. *Inspection and Reports.*** At all reasonable times Lessor, Vendor or their authorized representatives may inspect each unit of the Leased Property and the books and records of Lessee relative thereto (but such books and records shall not include books and records relating to Lessee's earnings with respect to the Leased Property), and, at such times as Lessor or Vendor may reasonably request, Lessee will furnish Lessor or Vendor accurate statements regarding the condition and state of repair of the units. Lessor or Vendor shall have no duty to make any such inspection or inquiry and shall not incur any liability or obligation by reason of not making any such inspection or inquiry. During any storage period provided in this Lease, Lessee will permit Lessor, Vendor or any person designated by them, including authorized representatives of any prospective purchaser or lessee of any unit, to inspect the same. Any such inspection made by Lessor or Vendor, their agents, servants or employees shall be at Lessor's or Vendor's risk of loss and

damages for injuries to such persons or other persons and to property which may be caused by the negligence of such inspectors. Lessee shall not be liable, except in the case of its negligence or that of its employees or agents, for any injury or death to any person exercising, either on behalf of Lessor, Vendor or any prospective purchaser or lessee, the rights of inspection granted hereunder.

On or before May 1 in each year, commencing with the year 1974, Lessee will cause to be furnished to Lessor and Vendor in such number of counterparts as Lessor and Vendor may request an accurate statement as of the preceding December 31, (a) showing the amount, description and numbers of the Leased Property then covered hereby, the amount, description and numbers of all units of the Leased Property that may have suffered a Casualty Occurrence (as hereinafter defined) during the preceding 12 months (or since the date of delivery hereunder of the Leased Property in the case of the first such statement) and such other information regarding the condition and state of repair of the Leased Property as Lessor and Vendor may reasonably request, and (b) stating that, in the case of all units of the Leased Property repainted or repaired during the period covered by such statement, the markings required by Section 4 hereof have been preserved or replaced.

Within 10 days after its annual audit has been completed, but in no event later than six months after the close of each fiscal year, Lessee will promptly furnish to Lessor and Vendor a balance sheet as of the end of such year and a profit and loss statement for the year then ended prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year, and certified by Lessee's independent certified public accountants. Lessee shall also furnish to Lessor and Vendor such other financial information as Lessor or Vendor may reasonably request from time to time.

Lessee agrees to prepare and deliver to Lessor with a copy to Vendor, within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of Lessor) any and all reports required to be filed by Lessor, with any federal, state or other regulatory authority by reason of the ownership by Lessor of the Leased Property or the leasing of the units of the Leased Property to Lessee.

**SECTION 7. *Lessee's Representations and Warranties.*** Lessee represents and warrants to Lessor that: (i) Lessee is an unincorporated common law trust duly organized and existing in good standing under

the laws of the State of Missouri and is duly qualified to do business wherever necessary to carry on its present business and operations; (ii) Lessee has full power, authority and legal right to enter into and perform this Lease, the Sublease (as hereinafter defined), the Conditional Sale Agreement, the Finance Agreement dated as of August 15, 1972 among Lessor, Lessee, Vendor, General Electric Credit Corporation and the Investors named therein, the Guarantee Agreement dated as of August 15, 1972 between Lessee and Anheuser-Busch, Incorporated and the Letter Agreement dated as of August 15, 1972 among Lessor, Lessee, Vendor and Anheuser-Busch, Incorporated and the execution, delivery and performance of such documents have been duly authorized by all necessary action on the part of Lessee, and do not violate any judgment, order, law or regulation applicable to Lessee or any provision of Lessee's Articles of Association, or result in the breach of, constitute a default under, contravene any provisions of, or result in the creation of any lien, charge, encumbrance or security interest upon any assets (other than Lessee's leasehold interest in the Leased Property) of Lessee under, any indenture, agreement or instrument to which Lessee is a party or by which Lessee or its assets may be bound or affected; (iii) the documents referred to in clause (ii) above constitute the legal, valid and binding obligations of Lessee enforceable in accordance with the terms thereof, subject as to enforceability to any applicable bankruptcy, insolvency or other laws affecting creditors' rights generally; (iv) there are no suits or proceedings pending or, to the knowledge of Lessee, threatened in any court or before any regulatory commission, board or other administrative or governmental agency against or affecting Lessee, which, in the reasonable opinion of Lessee, will have a material adverse effect on the financial condition or business of Lessee; (v) all financial statements of Lessee which have been furnished to Lessor and Vendor, have been prepared in conformity with generally accepted accounting principles, and present fairly the financial condition of Lessee as of the dates thereof and the results of Lessee's operations for the fiscal periods covered thereby, and since such dates there has been no material adverse change in Lessee's financial condition; (vi) except for the recording of this Lease and the Sublease with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, no recording or filing of this Lease or the Sublease or of any financing statement with respect thereto, is necessary under the laws of the United States of America or any State thereof in order to fully protect Lessor's title to



and interest in each unit as against Lessee and any third parties (other than Vendor) in any applicable jurisdictions within the United States; and (vii) neither the execution and delivery by Lessee of this Lease nor any of the other documents referred to in clause (ii) above nor any of the transactions by Lessee contemplated thereby require the consent, approval or authorization of the Interstate Commerce Commission or any other federal or state governmental authority.

SECTION 8. *Disclaimer of Representations and Warranties.* LESSOR SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, COMPLIANCE WITH SPECIFICATIONS, CONDITION, MERCHANTABILITY, DESIGN, OPERATION OR FITNESS FOR USE OF ANY UNIT OF LEASED PROPERTY, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OF LEASED PROPERTY, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee, but Lessor hereby irrevocably, so long as Lessee is not in default, appoints and constitutes Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of Lessor and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have, under the provisions of the Conditional Sale Agreement in respect thereof. Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between Lessee and Lessor that all units of the Leased Property described therein are in all the foregoing respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters.

SECTION 9. *Taxes.* All payments to be made by Lessee hereunder will be free of expense to Lessor for collection or other charges and will be free of expense to Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States Federal income tax [and, to the extent that Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax] payable by Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes, gross receipts taxes [except gross receipts taxes in the nature, or in lieu, of sales, use or rental taxes] or franchise taxes meas-

ured by net income based on such receipts), assessments or license fees and any charges, fines or penalties, except as to any such charges, fines or penalties caused by or attributable to Lessor, in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or of the Conditional Sale Agreement, all of which impositions Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. Lessee will also pay promptly all impositions which may be imposed upon any unit of the Leased Property or for the use or operation thereof or upon the earnings arising therefrom or upon Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such unit of the Leased Property free and clear of all impositions which might in any way affect the title of Lessor or result in a lien upon any such unit of the Leased Property; *provided, however*, that Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of Lessor, adversely affect the title, property or rights of Lessor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against Lessor directly and paid by Lessor, Lessee shall reimburse Lessor on presentation of an invoice therefor. Prior to making such payment, Lessor shall promptly notify Lessee of the impositions charged or levied, and Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such impositions, at its sole expense.

In the event that Lessor shall become obligated to make any payment to Vendor pursuant to Article 9 of the Conditional Sale Agreement not covered by the foregoing paragraph of this Section 9, Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to Lessor as will enable Lessor to fulfill completely its obligations pursuant to said Article 9.

In the event any reports with respect to impositions are required to be made on the basis of individual units of the Leased Property, Lessee will either make such reports in such manner as to show the interests of Lessor and Vendor in such units or notify Lessor and Vendor of such requirement and make such reports in such manner as shall be satisfactory to Lessor and Vendor.

In the event that, during the continuance of this Lease, Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 9, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by Lessee.

Lessor, as the owner of the units of the Leased Property, shall be entitled to such deductions, credits and other benefits as are provided by the income tax provisions of the Internal Revenue Code of 1954, as amended from time to time and the regulations thereunder (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Investment Credit and the ADR Deduction (all as hereinafter defined in this Section 9), with respect to the units to the extent so provided; it being understood however that Lessee makes no representation, warranty or statement as to the ownership of the Leased Property by Lessor.

Lessee represents and warrants that (i) none of the units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time of delivery of the units hereunder, the units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time of such delivery (unless Lessor shall have caused a disqualifying "original use of such property"), the units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with Lessor; (iii) at all times during the first seven years of this Lease, each unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code; and (iv) at the time of delivery of the units hereunder, each unit will constitute "eligible property" within the meaning of Treasury Regulations, Section 1.167(a)-11.

If any representation, warranty or statement made by Lessee (or any officer, employee or agent of Lessee) herein or in connection with this Lease or the units shall prove to be fraudulent, untrue, incorrect or inaccurate in whole or in part, or if Lessee shall take any action in respect of its income tax returns or otherwise which shall be inconsistent with, or in contravention of, this transaction; and if Lessor shall thereby lose or not be entitled to claim the Investment Credit or the ADR Deduction in respect of any unit or units, then Lessee shall pay Lessor, as additional rent, an amount which, after deduction of all

taxes required to be paid by Lessor in respect of the receipt of such additional rent, shall be equal to the benefit so lost plus any interest or penalty assessed against Lessor in connection with such loss. For the purpose of the preceding sentence, as related to the ADR Deduction, in the event that it is determined that Lessor is entitled to depreciation deductions for Federal income tax purposes which are less favorable than the ADR Deduction elected by Lessor, the measure of the "benefit so lost" (before the increase required to reflect the "deduction of all taxes required to be paid by Lessor in respect of the receipt of such additional rent") shall be limited to interest for the periods such deductions are deferred, computed at the rate of  $3\frac{7}{8}\%$  simple interest, compounded quarterannually, on an amount equivalent to the increased tax resulting from such lesser deductions. Lessor agrees to notify Lessee promptly of any claim made by the Internal Revenue Service against Lessor with respect to such loss which relates to information which may be particularly within the knowledge of Lessor.

As used in this Section 9 the terms Investment Credit and ADR Deduction shall have the following meanings: Investment Credit shall mean the investment credit allowed by Section 38 and related sections of the Code; and ADR Deduction shall mean the depreciation deductions authorized with respect to a unit of the Leased Property under any of the methods provided in Section 167 of the Code utilizing the "class lives" and any options with respect thereto prescribed in accordance with Section 167(m) of the Code.

Notwithstanding the foregoing, Lessor shall not be entitled to any payment of additional rent under this Section 9 for any unit if Lessor shall lose or not be entitled to claim the Investment Credit or the ADR Deduction for such unit as a direct result of the occurrence of any of the following events:

(i) an event shall occur whereby Lessee is required by the terms of Section 12 hereof to pay, and shall pay in full, the Casualty Value for such unit;

(ii) a voluntary transfer by Lessor of legal title to such unit, the disposition by Lessor of any interest in such unit, the reduction by Lessor of its interest in the rentals from such unit under the Lease or any other transfer or disposition of Lessor's interest in such unit which has the effect of requiring Lessee to pay Lessor additional rent, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Conditional Sale Agreement without the prior written consent of Lessee and such amendment causes Lessor to sustain a loss or detriment;

(iv) the failure of Lessor to claim the Investment Credit or ADR Deduction, as applicable, in its income tax return for the appropriate year or the failure of Lessor to follow proper procedure in claiming the Investment Credit or ADR Deduction, as applicable; or

(v) the failure of Lessor to have sufficient liability for tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction, as applicable.

Lessee's agreement to pay any sums which may become payable pursuant to this Section 9 shall survive the expiration or other termination of this Lease.

Lessor shall provide Lessee with a copy of the opinion of its special counsel, Messrs. Cravath, Swaine & Moore, to the effect that Lessor is entitled to the Investment Credit and the ADR Deduction with respect to the units of the Leased Property and to deduct any interest payments made to Vendor pursuant to the Conditional Sale Agreement.

**SECTION 10. Indemnification.** Lessee hereby agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor, Vendor and their respective successors, assigns, agents, employees, officers and directors, from and against, any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind and nature (for purposes of this Section 10 collectively called "Expenses"), imposed on, asserted against or reasonably incurred by Lessor, Vendor or any of their respective successors, assigns, agents, employees, officers and directors in any way relating to or arising out of this Lease, the Conditional Sale Agreement, the Finance Agreement or any other document executed in connection therewith, the ordering, acquisition, ownership, delivery, lease, possession, use, operation, condition, sale or other disposition of any unit of the Leased Property (including, without limitation, latent and other defects, whether or not discoverable by Lessor or Lessee, and any claim for patent, trademark or copyright infringement), except

only that Lessee shall not be required to indemnify Lessor, Vendor or their respective successors, assigns, agents, employees, officers and directors for (i) Expenses to be borne pursuant to the express provisions hereof by the party otherwise to be indemnified hereunder, (ii) Expenses resulting from the willful misconduct or gross negligence of the party otherwise to be indemnified hereunder, (iii) Expenses resulting from the failure of Lessor to comply with the provisions of Section 24 hereof, or (iv) Expenses incurred by Lessor and Vendor in connection with the preparation, execution and delivery of this Lease, the Conditional Sale Agreement, the Finance Agreement or any other document executed in connection therewith.

All amounts payable by Lessee pursuant to this Section 10 shall be payable directly to the party entitled to indemnification. All the indemnities contained in this Section 10 shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by Lessor and Vendor. Upon payment in full of any indemnity contained in this Section 10 by Lessee, it shall be subrogated to any rights of the individual or corporation indemnified in respect of the matter against which indemnity has been given.

SECTION 11. *Insurance.* Lessee will, without cost to Lessor, maintain or cause to be maintained in effect while this Lease shall be in effect, insurance policies with responsible insurers insuring against loss or damage to the Leased Property from such risks and in such amounts as Lessee would, in the prudent management of its properties, maintain or cause to be maintained with respect to similar property owned by it. Notwithstanding the provisions of the foregoing sentence, however, Lessee may self-insure against such risks by deductible provisions if (i) the units are self-insured to no greater extent than any similar property owned by Lessee and (ii) in the event of loss or damage affecting both the units and property owned by Lessee, no more than a pro rata portion of such self-insurance would be applicable to the units.

Lessee will, at Lessee's sole expense, maintain or cause to be maintained in effect while this Lease is in effect, insurance policies with responsible insurers with respect to each unit insuring against loss or damage to the person and property of others from such risks and in

such amounts as Lessee would, in the prudent management of its business, maintain or cause to be maintained with respect to similar equipment owned by it; provided, however, that such insurance shall provide coverage in the amount of not less than \$2,000,000 per any one occurrence. Notwithstanding the provisions of the foregoing sentence, however, Lessee may self-insure against such risk by a deductible clause not to exceed \$250,000 per occurrence if (i) the units are self-insured to no greater extent than any similar property owned by Lessee and (ii) in the event of loss or damage affecting both the units and property owned by Lessee, no more than a pro rata portion of such self-insurance would be applicable to the units.

Any insurance policies maintained in accordance with this Section 11 shall be in such form as shall be satisfactory to Lessor and shall be endorsed to name Lessor and Vendor as additional insured parties as their respective interests may appear. Certified copies or certificates of such insurance policies shall be delivered to Lessor upon demand. Each insurer shall agree by means satisfactory to Lessor that it will give Lessor and Vendor 10 days written notice before any policy shall be altered or cancelled.

SECTION 12. *Casualty Occurrences.* In the event that any unit of the Leased Property shall be or become worn out, lost, stolen, destroyed, or, in the opinion of Lessor and Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, Lessee shall promptly and fully notify Lessor and Vendor with respect thereto. In the event of a Casualty Occurrence to any unit of the Leased Property, Lessee shall give Lessor written notice thereof as soon as practicable (except that no such notice shall be given during the ten day period preceding any quarterly payment date) after such occurrence and shall pay the Casualty Value (as hereinafter defined) for such unit in accordance with Schedule B attached hereto (hereinafter called "Casualty Value Schedule"), such payment to be made on the quarterly payment date next following the date on which written notice is given; provided that, if such Casualty Occurrence occurs before the commencement date of the base term, such payment shall be made on the commencement date in an amount equal to that percentage of Lessor's Cost for such unit as is set forth opposite Payment No. 1 in

the Casualty Value Schedule. Rent for any unit as to which such payment is made shall continue to be payable in respect of such unit to and including the date on which such payment of the Casualty Value by Lessee is made and thereafter the rental for such unit shall cease to accrue, the term of this Lease as to such unit shall terminate and (except in the case of loss, theft or complete destruction of such unit) Lessor shall be entitled to recover possession of such unit.

The Casualty Value of each unit as of any quarterly rental payment date shall be that percentage of Lessor's Cost for such unit as is set forth in the Casualty Value Schedule opposite the number of such rental payment date (such numbers commencing with the due date of the first payment of base rent); provided that the Casualty Value for each unit during any renewal term of this Lease shall be 15% of Lessor's Cost for such unit.

Except as hereinabove provided in this Section 12, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any unit after delivery to, and acceptance thereof by, Lessee hereunder. The payment by Lessee of the Casualty Value of any unit shall not release Lessee from its indemnity obligations with respect to such unit of the Leased Property.

Any payments received at any time by Lessor or by Lessee from any governmental authority or other party (except Lessee) as a result of a Casualty Occurrence with respect to any unit will be applied as follows:

(i) any such payments received at any time by Lessee shall be promptly paid to Lessor for application pursuant to the following provisions, except that Lessee may retain any amounts which Lessor would at the time be obligated to pay to Lessee under said provisions;

(ii) so much of such payments as shall not exceed the Casualty Value required to be paid by Lessee pursuant to this Section 12 shall be applied in reduction of Lessee's obligation to pay such Casualty Value, if not already paid by Lessee, or, if already paid by Lessee, shall be applied to reimburse Lessee for its payment of such Casualty Value, unless an Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing; and



(iii) Lessor shall be entitled to the balance, if any, of such payments remaining thereafter, except if such balance is the result of payments made pursuant to the interchange rules of the Association of American Railroads, as such rules now exist or are hereafter amended, in which case Lessee shall be entitled, as payment for the interruption of its leasehold interest, to such balance unless an Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing.

SECTION 13. *Possession and Use by Lessee.* Lessee will not deliver, transfer or relinquish possession of any unit of the Leased Property except that, unless an Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing, Lessee shall have the right to:

(a) Possession and use of the units by Lessee upon lines of railroad owned or operated by Lessee or upon lines of railroad over which Lessee has trackage or other operating rights or over which railroad equipment of Lessee is regularly operated pursuant to contract, and also to permit the use of the units upon connecting and other carriers in the usual interchange of traffic but only upon and subject to all terms and conditions of this Lease; provided, however, that Lessee shall not assign or permit the possession and use of any unit to service involving the regular operation and maintenance of such unit outside the United States of America. Lessee may receive and retain any compensation for the use of any unit from other railroads so using any unit;

(b) Deliver or relinquish possession of any unit to any organization for testing, overhaul, repairs, alterations, or modifications;

(c) Enter into the Sublease dated as of August 15, 1972 with Manufacturers Railway Company, as sublessee (hereinafter called the "Sublease"), in the form of Exhibit B to this Lease; and

(d) With the prior written consent of Lessor and Vendor, which consent will not be unreasonably withheld, sublease any unit of the Leased Property to any other railroad company or other responsible sublessee;

provided, however, that the rights of any person who receives possession of a unit as permitted by this Section 13 shall be subject and subordinate to all the terms of this Lease and the Conditional Sale Agreement and any sublease permitted by this Section 13 shall be made expressly subject and subordinate to all the terms of this Lease

and the Conditional Sale Agreement, including, without limitation, in either instance, Lessor's remedies under this Lease and Vendor's remedies under the Conditional Sale Agreement. No sublease or other transfer or relinquishment of the possession of any unit shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder.

SECTION 14. *Assignment.* Lessee hereby consents to the assignment by Lessor of this Lease and any reassignment of this Lease or rents hereunder, with or without notice. Lessee agrees that it shall not assert against any assignee of Lessor, and that the rights of such assignee to the rents and other amounts payable by Lessee hereunder shall not be subject to, any claim, set-off, counterclaim, recoupment, abatement or defense of any kind or nature whether by reason of any damage to or loss or destruction of any unit of the Leased Property, or any part thereof, or by reason of any defect in or failure of title of Lessor or interruption from whatsoever cause in the use, operation or possession of the Leased Property or any part thereof, or by reason of any indebtedness or liability howsoever and whenever arising of Lessor to Lessee or to any other person, firm or corporation or to any governmental authority, or for any other cause whatsoever, it being the intent hereof that Lessee shall be absolutely and unconditionally obligated to pay all such sums to such assignee. In the event of any such assignment, Lessee agrees that if directed by Lessor or by any assignee of Lessor in writing, it will (i) pay direct to such assignee any rent or other amount now or hereafter owing under this Lease and (ii) give to such assignee any notice required to be given to Lessor hereunder. Any assignee of Lessor shall have all the rights, powers, privileges and remedies of Lessor hereunder (whether or not the applicable provisions of this Lease contain express reference to any such assignee) but none of Lessor's obligations; provided, however, no such assignment shall in any way relieve Lessor of any obligations hereunder. Lessee will not, except with the prior written consent of Lessor and Vendor (which consent will not be unreasonably withheld) assign in whole or in part any of Lessee's rights hereunder except as provided in Section 13 hereof. No assignment in whole or part shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder. The rights and obligations of Lessor and Lessee hereunder shall inure to the benefit of, and be binding on, the permitted successors and assigns of Lessor and Lessee, respectively. Unless the context otherwise requires, Trustor shall be entitled to all the rights, benefits and indemnifications granted

to Lessor under this Lease and the term Lessor shall be deemed to include Trustor for such purposes; and, in respect of the provisions of the last seven paragraphs of Section 9 hereof, the term Lessor shall be deemed to mean only Trustor.

SECTION 15. *Events of Default.* The following events shall constitute Events of Default (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body or otherwise):

- (a) Lessee shall fail to make any payment of rent when the same shall become due and such failure shall continue unremedied for a period of ten (10) days; or
- (b) Lessee shall fail to maintain insurance with respect to the Leased Property as required by Section 11 hereof, and such failure shall continue unremedied for a period of ten (10) days after written notice thereof by Lessor; or
- (c) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any unit of the Leased Property or any interest in this Lease or any unit of the Leased Property or shall permit, make or suffer any unauthorized transfer of possession of any unit of the Leased Property; or
- (d) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of fifteen (15) days after written notice thereof by Lessor; or
- (e) Any representation or warranty made by Lessee herein or in any document or certificate furnished Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect; or
- (f) If any statement furnished by Lessee pursuant to this Lease is untrue in any material respect on the date as of which the facts therein set forth are stated; or
- (g) Any proceeding shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such

ineffectiveness shall continue), all the obligations of Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for Lessee or for the property of Lessee in connection with any such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier.

SECTION 16. *Remedies.* If an Event of Default shall have occurred and be continuing, Lessor shall, to the extent permitted by law, have the following rights and remedies:

(a) Proceed by appropriate actions at law or equity, to enforce performance by Lessee of the applicable covenants and terms of this Lease or to recover damages for the breach thereof; or

(b) By notice in writing to Lessee, terminate this Lease and/or Lessee's rights of possession hereunder as to all or any part of the Leased Property whereupon all right, title and interest of Lessee to or in the use of such Leased Property shall terminate, and Lessor may, directly or by its agent, enter upon any premises where the Leased Property may be located and take possession thereof, any expenses of such taking to be borne by Lessee. For the purpose of delivering possession to Lessor as provided aforesaid, Lessee shall at its own cost and expense forthwith assemble all units of the Leased Property as provided in Section 17 hereof and provide storage for said units as provided in said Section 17. In the event of any such termination Lessor may (i) retain all rents and additional sums theretofore paid by Lessee hereunder, (ii) recover from Lessee all rents and additional sums accrued and unpaid under any of the terms hereof as of the date of termination, and (iii) recover from Lessee as liquidated damages, but not as penalty, an aggregate sum which at the time of such termination represents the excess, if any, of the then Casualty Value of such Leased Property, as determined pursuant to the provisions of Section 12 hereof, over the net proceeds received by Lessor from any public or private sale of such Leased Property provided that Lessor has given Lessee fifteen (15) business days' notice of such sale.

In addition to the foregoing, Lessor shall be entitled to recover from Lessee any and all costs and expenses which Lessor shall sustain by reason of the occurrence of any such Event of Default, including, without limitation, legal fees and brokerage fees and other costs and expenses as shall be expended or incurred in the taking, possession, storage, reasonable maintenance and sale of the Leased Property or in the enforcement of any right or privilege hereunder or in any action in connection therewith. The

remedies herein provided shall not be deemed to be exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law, in equity or in bankruptcy.

The failure of Lessor to exercise the rights granted it hereunder upon the occurrence of any Event of Default shall not constitute a waiver of any such right upon the continuation or recurrence of any such Event of Default or similar Event of Default.

**SECTION 17. *Return of Leased Property.*** Upon the expiration of the base term, or of any renewal term of this Lease or any prior termination of this Lease for any reason, Lessee shall return each unit of the Leased Property to Lessor in good order and repair, excepting only reasonable wear and tear, by causing all units of the Leased Property to be moved, at Lessee's expense, onto Lessee's storage tracks in St. Louis, Missouri and by keeping all such units for a period of 90 days, without charge to Lessor for rent or storage during the first 30 days and for the remaining 60 days if such storage tracks are available. If during the latter 60 days such storage tracks are not available and Lessee shall deliver invoices of others for such storage and any applicable transportation charges of others, such invoices shall be paid by Lessor provided that such storage was arranged by Lessee on storage tracks nearest to Lessee's lines as may have been reasonably available. Any units not delivered in accordance with this Section 17 shall continue to be subject to all of the rights and duties of the parties set forth in this Lease.

**SECTION 18. *Liens.*** Lessee will not directly or indirectly create, incur, assume or suffer to exist any liens, mortgages, encumbrances, pledges, charges and security interests of any kind (hereinafter called "Liens") on or with respect to any unit of the Leased Property, title thereto or any interest therein, except (i) the respective rights of Lessor and Vendor as provided in this Lease and the Conditional Sale Agreement, (ii) Liens for taxes either not yet due or being contested in good faith and by appropriate proceedings so long as such proceedings do not involve, in the opinion of Lessor, any danger of the sale, forfeiture or loss of any unit of the Leased Property or interest therein, (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business, which are not delinquent or the enforcement of which has been suspended, but then only for the duration of such suspension, (iv) Liens

arising out of judgments or awards against Lessee with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and with respect to which there shall have been secured a stay of execution pending such appeal or proceeding for review, and (v) Liens to which Lessee's leasehold interest in the Leased Property is now or may hereafter become subject under indentures pursuant to which securities issued or assumed by Lessee are now or may hereafter be outstanding. Lessee will promptly, at its own expense, take such action as may be necessary to duly discharge or eliminate or bond in a manner satisfactory to Lessor any such Liens not excepted above if the same shall arise at any time and will furnish Lessor with evidence of the discharge of such Liens or such other action taken with respect thereto.

SECTION 19. *Renewal Options.* If no Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing and this Lease shall not have been earlier terminated, Lessee shall be entitled, at its option upon written notice to Lessor (with the written concurrence of Anheuser-Busch, Incorporated which shall be attached to such notice) at least 120 days prior to the expiration of the base term, to renew this Lease with respect to all or any units of the Leased Property for any of the following renewal terms commencing at the expiration of the base term:

(i) Five years at a rental for each unit leased hereunder during such renewal term, payable in twenty (20) installments, quarterly in arrears, each in an amount equal to the sum of (a) 4.35% of the fair market value of such unit as of the end of the base term, plus (b) interest on the amount determined in (a) at a rate per annum, compounded quarterly, equal to 2% in excess of the prime rate from time to time in effect during the renewal term at Bankers Trust Company. Fair market value shall be the value upon which a willing buyer and a willing seller would agree, each respectively under no compulsion to buy or sell, to be determined by agreement between Lessor and Lessee, and if they cannot agree, by an independent appraiser selected by Lessor but satisfactory to Lessee. Any such appraisals shall be made solely at Lessee's expense.

(ii) Three years at a rental for each unit leased hereunder during such renewal term, payable in twelve (12) installments, quarterly in arrears, each in an amount equal to 40% of the base rent for such unit during the base term of this Lease.

(iii) Two years at a rental for each unit leased hereunder during such renewal term, payable in eight (8) installments, quarterly in arrears, each in an amount equal to 50% of the base rent for such unit during the base term of this Lease.

All of the provisions of this Lease, with the rentals above set forth, shall be applicable during the renewal term for any unit. Lessee may elect different renewal options for different units of the Leased Property, but may only elect one renewal option for each unit of the Leased Property.

SECTION 20. *Recording.* Lessee will promptly do any and all acts reasonably requested by Lessor to permit Lessor to cause this Lease, any assignment hereof and any amendments or supplements hereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act. Lessee will from time to time do and perform any other act and will execute, acknowledge, and deliver any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection of Lessor's interest in the Leased Property and take such further action as Lessor may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Lease and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder. Lessee agrees to pay the actual cost, not to exceed \$300, for the initial filing and recording of this Lease or required of Lessor under the Conditional Sale Agreement or as required under any other document executed in connection with the Lease transaction. Lessee also agrees to pay all filing and recording fees which are required because of any amendments or supplements to this Lease, any assignment by Lessee of this Lease to the extent permitted hereunder or as may be required as a result of any other act by Lessee, but not including filing and recording fees which are required as a result of any assignment by Lessor of its interest other than the initial assignment to Vendor as security under the Conditional Sale Agreement.

SECTION 21. *Lessor's Right to Perform for Lessee.* If Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, Lessor may itself make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be,

shall be deemed additional rent hereunder and shall be payable by Lessee upon demand, together with interest thereon from the date Lessor shall make such payment or incur such expenses, at the rate of 9% per annum until paid, or at such lesser rate as may be legally enforceable.

SECTION 22. *Successor Trustee; Co-Trustee.* In the case of the appointment of any successor trustee pursuant to the terms of the Trust Agreement, such successor trustee shall, upon written notice by such successor trustee to Lessee, succeed to all the rights, powers and title of Lessor hereunder and shall be deemed to be Lessor. The Trustee or any successor trustee from time to time serving as Lessor hereunder may from time to time appoint one or more co-trustees or separate trustees pursuant to the terms of the Trust Agreement to exercise or hold any or all of the rights, powers and title of Lessor hereunder. No such appointment of any successor trustee, co-trustee or separate trustee shall require any consent or approval by Lessee or shall in any way alter the terms of this Lease or Lessee's obligations or rights hereunder. The appointment of one successor trustee, co-trustee or separate trustee shall not exhaust the right to appoint further successor trustees, co-trustees and separate trustees pursuant to the Trust Agreement, but such right may be exercised repeatedly as long as this Lease may be in effect.

SECTION 23. *Enforcement by Vendor.* The provisions of this Lease as they relate to Vendor are for the benefit of Vendor and may be enforced by Vendor, to the same extent as if it were a party hereto, as a third-party beneficiary hereof, without any assignment thereof to Vendor and without any responsibility by Lessor in connection therewith.

SECTION 24. *Quiet Enjoyment.* Unless an Event of Default shall have occurred and be continuing, Lessor agrees that Lessee shall be entitled, on the terms and conditions of this Lease for any unit of the Leased Property, to the uninterrupted use and quiet enjoyment of such unit as against Lessor or Vendor or any person claiming under or through Lessor or Vendor other than as a result of any failure of Lessee to discharge any of its duties or obligations hereunder.

In the absence of an Event of Default or failure of Lessee to discharge any of its duties or obligations hereunder, Lessee shall be



entitled to proceed in any court of law or equity against Lessor or Vendor or any person claiming under or through Lessor or Vendor for the recovery of damages from and/or injunctive relief against any such party or parties who interfere with Lessee's right to uninterrupted use and quiet enjoyment of any unit of the Leased Property as provided in this Section 24. Nothing contained in this Section 24 shall in any way affect the obligations and duties of Lessee, including but not limited to, the payment of rent as provided in Section 3 hereof.

**SECTION 25. Notices.** All notices required under the terms and provisions hereof shall be in writing, and any such notice shall become effective when delivered or deposited in the United States mail, with proper postage for certified or registered mail prepaid, addressed as follows: if to Lessee, at 2850 South Broadway, St. Louis, Missouri 63118, Attention: R. W. Schmidt; if to Lessor, addressed to it at P. O. Box 318, Church Street Station, New York, New York 10015, Attention: Corporate Trust Division, with duplicate copies to General Electric Credit Corporation at the following addresses: P. O. Box 8300, Stamford, Connecticut 06904, Attention: Manager-Operations, Leasing and Industrial Loan Financing, and P. O. Box 81, White Plains (North Station), New York 10603, Attention: Loan Officer; and if to Vendor, addressed to it at P. O. Box 2258, Baltimore, Maryland 21203, Attention: Corporate Trust Department; or, as to any party, at such other address as such party shall from time to time designate in writing to the other parties.

**SECTION 26. Miscellaneous.** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect or which might require Lessor to mitigate damages other than as expressly provided herein. No term or provision of this Lease may be changed, waived, discharged or terminated orally, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease shall constitute an agreement of lease, and nothing

herein shall be construed as conveying to Lessee any right, title or interest in any unit of the Leased Property except as a lessee only. All computations of interest and amounts equivalent to interest under this Lease shall be made on the basis of a 360-day year consisting of twelve 30-day months. The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State of Missouri, including all matters of construction, validity and performance; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing and recording hereof. Although this Lease is dated as of August 15, 1972 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

ST. LOUIS REFRIGERATOR CAR COMPANY,  
as Lessee

By R. H. Schmidt  
President

Witness:

John F. Haggard  
Secretary

BANKERS TRUST COMPANY, Trustee,  
as Lessor

By Roman Illus  
Assistant Vice President

[CORPORATE SEAL]

Attest:

M. K. Haggard  
Assistant Secretary

STATE OF MISSOURI, }  
COUNTY OF ST. LOUIS } ss.:

On this 11<sup>th</sup> day of September, 1972, before me personally appeared R. W. Schmidt, to me personally known, who, being by me duly sworn, says that he is the President of ST. LOUIS REFRIGERATOR CAR COMPANY, that said instrument was signed on behalf of said company by authority of its Board of Trustees, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

*Eldon D. Harris*  
Notary Public

[NOTARIAL SEAL]

My Commission expires 11/13/75

STATE OF NEW YORK, }  
COUNTY OF NEW YORK } ss.:

On this 14th day of September, 1972, before me personally appeared **ROMANO I. PELUSO** to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of BANKERS TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

My Commission expires

*Olivia Treglio*  
Notary Public

OLIVIA TREGLIO  
Notary Public, State of New York  
No. 31-4015670  
Qualified in New York County  
Commission Expires March 30, 1973

**SCHEDULE A TO LEASE**

<u>Quantity</u>	<u>Description</u>	<u>Road Numbers (inclusive)*</u>
250	60' 100-ton Standard Gauge RBL Cars	MRS 2000 thru 2249

\* to be assigned to units of Leased Property.

# **SCHEDULE B TO LEASE**

## **CASUALTY VALUE SCHEDULE**

<u>Base Rent Payment No.</u>	<u>Percentage</u>	<u>Base Rent Payment No.</u>	<u>Percentage</u>
1	103.0159	32	66.8897
2	103.0746	33	65.5286
3	103.0960	34	64.1384
4	103.0769	35	62.7188
5	102.9984	36	61.2699
6	102.8571	37	59.7936
7	102.6521	38	58.2899
8	102.3833	39	56.7585
9	102.0570	40	55.2002
10	101.6734	41	53.6212
11	101.2317	42	52.0222
12	100.7317	43	50.4031
13	95.5104	44	48.7638
14	94.9010	45	47.1053
15	94.2361	46	45.4275
16	93.5157	47	43.7303
17	92.7434	48	42.0133
18	91.9191	49	40.2765
19	91.0423	50	38.5195
20	90.1128	51	36.7422
21	84.4704	52	34.9444
22	83.4602	53	33.1257
23	82.4159	54	31.2860
24	81.3373	55	29.4251
25	80.2263	56	27.5533
26	79.0831	57	25.6744
27	77.9072	58	23.7886
28	76.6987	59	21.8965
29	70.7927	60 (and thereafter and during any renewal term)	15.0000
30	69.5228		
31	68.2218		

**EXHIBIT A  
TO  
LEASE**

**CERTIFICATE OF ACCEPTANCE**

This CERTIFICATE OF ACCEPTANCE, dated as of \_\_\_\_\_, 1973, executed and delivered by St. Louis Refrigerator Car Company, an unincorporated common law trust ("Lessee") to Bankers Trust Company, as Trustee under the Trust Agreement dated as of August 15, 1972 ("Trust Agreement") between the beneficiary named therein and said Trustee (herein in its capacity as Trustee being called "Lessor"), and to Fruit Growers Express Company ("Manufacturer") under the Conditional Sale Agreement dated as of August 15, 1972 ("Conditional Sale Agreement") among Lessee, Lessor and Manufacturer,

**WITNESSETH:**

WHEREAS, Lessor and Lessee have heretofore entered into that certain Lease dated as of August 15, 1972 (herein called the "Lease" and the terms defined therein being hereinafter used with the same meaning), which Lease provides for the execution and delivery from time to time of Certificates of Acceptance substantially in the form hereof for the purpose of confirming delivery and acceptance of the units of the Leased Property leased under the Lease; and

WHEREAS, the Conditional Sale Agreement provides for the execution and delivery from time to time of Certificates of Acceptance substantially in the form hereof for the purpose of confirming delivery and acceptance of the units of the Leased Property (referred to in the Conditional Sale Agreement as the "Equipment") sold by Manufacturer under the Conditional Sale Agreement;

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessee hereby confirms and agrees as follows:

1. Lessee hereby accepts and leases from Lessor under the Lease,

the units or unit of the Leased Property (the "Delivered Unit") which are described below:

Description of  
Unit

Road Numbers

2. The acceptance date of the Delivered Unit is the date of this Certificate of Acceptance set forth in the opening paragraph hereof.

3. Lessee and Lessor hereby confirm that the Delivered Unit has been duly inspected in accordance with Section 1 of the Lease and Article 2 of the Conditional Sale Agreement and duly marked in accordance with the terms of Section 4 of the Lease and Article 8 of the Conditional Sale Agreement and that Lessee has accepted the Delivered Unit for all purposes hereof and of the Lease; provided, however, that nothing contained herein or in the Lease shall in any way diminish or otherwise affect any right which Lessee or Lessor may have with respect to the Delivered Unit against Manufacturer or any subcontractor of Manufacturer under the Conditional Sale Agreement.

4. The undersigned hereby simultaneously accepts the Delivered Units on behalf of Lessor, as the authorized representative of Lessor, under the Conditional Sale Agreement and on behalf of itself as Lessee under the Lease.

IN WITNESS WHEREOF, Lessee has caused this Certificate of Acceptance to be duly executed as of the day and year first above written and to be delivered in the State of Missouri.

ST. LOUIS REFRIGERATOR CAR COMPANY,  
as Lessee

By .....  
(Title)

**EXHIBIT B  
TO  
LEASE**

**SUBLEASE**

THIS AGREEMENT dated as of August 15, 1972 between ST. LOUIS REFRIGERATOR CAR COMPANY, an unincorporated common law trust (hereinafter called the Company) and MANUFACTURERS RAILWAY COMPANY, a Missouri corporation (hereinafter called Manufacturers).

WHEREAS, the Company and Bankers Trust Company, as Trustee (hereinafter, together with its successors and assigns, called the Lessor), have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the leasing by the Lessor to the Company, as Lessee, of the units of railroad equipment described therein (hereinafter called the Units);

WHEREAS, the Company and Lessor have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), with FRUIT GROWERS EXPRESS COMPANY (hereinafter called Fruit Growers);

WHEREAS, Fruit Growers has agreed to manufacture, sell and deliver to Lessor the Units;

WHEREAS, Fruit Growers has assigned its interest in the Conditional Sale Agreement to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, called the Vendor);

WHEREAS, the Company desires to make available to Manufacturers for Manufacturer's use the Units which the Company is leasing pursuant to the Lease.

NOW, THEREFORE, in consideration of the premises and of the mutual promises hereinafter set forth, it is agreed between the parties hereto that:

1. The Company agrees to lease to Manufacturers, and Manufacturers agrees to lease from the Company, the Units more particularly described in Schedule A hereto. The lease term for any Unit shall commence on the date of the delivery of the Unit by the Company to Manufacturers and shall end on the date fifteen (15) years after the



commencement date of the base term of the Unit as such term is defined in Section 1 of the Lease.

Notwithstanding anything to the contrary contained herein, all rights of Manufacturers under this Agreement in and to the Units are subject and subordinate to all the terms and conditions of the Lease and the Conditional Sale Agreement including, without limitation, in either instance, the Lessor's remedies under the Lease and Vendor's remedies under the Conditional Sale Agreement. If an Event of Default shall occur under the Lease or the Conditional Sale Agreement, the Lessor or the Vendor, as the case may be, may terminate this Agreement even if Manufacturers is not so in default under this Agreement. It is expressly agreed that anything herein contained to the contrary notwithstanding, the Company shall at all times remain liable to the Lessor and Vendor to perform all of its duties and obligations with respect to the Units to the same extent as if this Agreement had not been executed and the Lessor and Vendor shall have no obligation or liability with respect to the Units by reason of, or arising out of, this Agreement.

2. Manufacturers shall keep each Unit numbered with the identifying number indicated in Schedule A hereto and shall keep each side of each such Unit marked and identified in accordance with Section 4 of the Lease and Article 8 of the Conditional Sale Agreement.

3. Manufacturers agrees (a) to operate the Units in accordance with and subject to the Association of American Railroads Code of Car Hire Rules and in accordance with the provisions of Sections 5, 13 and 18 of the Lease, (b) to pay to the Company as rental for the Units an amount equal to the car hire earnings received by Manufacturers from said operation of the Units and (c) to insure the Units in accordance with the provisions of Section 11 of the Lease.

4. Manufacturers shall maintain, and make available to the Company upon request, an accurate record of car hire earnings of the Units and shall pay to the Company each month an amount equal to the car hire earnings of the Units during the preceding month.

5. Manufacturers agrees that the Units covered by this Agreement will be assigned exclusively by Manufacturers to the service of Anheuser-Busch, Incorporated, except that any Units not required for such service, as mutually agreed upon by the parties hereto, will be operated by Manufacturers in other railroad service.

6. The Company shall at its expense keep and maintain the Units in proper order, repair and working condition and shall reimburse Manufacturers for any and all repair charges paid by Manufacturers to other parties under the provisions of the Association of American Railroads Code of Interchange Rules.

7. In the event any of the Units are damaged or destroyed, either on Manufacturers' line or lines of others, Manufacturers will make settlement with the Company in accordance with the provisions of the Association of American Railroads Code of Interchange Rules.

8. No liability shall attach to the Company for any injury, damage or loss of any kind in connection with the use of the Units, and Manufacturers agrees to hold the Company harmless from and against any claims or payment which the Company may be required to pay as a result thereof.

9. This Agreement shall be binding upon the parties hereto, their respective successors and assigns, and shall remain in full force and effect with regard to each of the Units for the term hereof as defined in paragraph 1 hereof, and for any extensions that may be mutually agreed upon by the parties hereto.

ST. LOUIS REFRIGERATOR CAR COMPANY

By .....

*President*

Witness:

.....

*Secretary*

MANUFACTURERS RAILWAY COMPANY

By .....

*Vice President*

[CORPORATE SEAL]

Attest:

.....

*Assistant Secretary*

**SCHEDULE A**

<u>Quantity</u>	<u>Description</u>	<u>Sublessee's Road Numbers (inclusive)*</u>
250	60' 100 Ton Standard Gauge RBL Cars	MRS 2000-2249

\* to be assigned to Units

STATE OF MISSOURI, }  
COUNTY OF ST. LOUIS } ss.:

On this       day of September, 1972, before me personally appeared R. W. Schmidt, to me personally known, who, being by me duly sworn, says that he is the President of ST. LOUIS REFRIGERATOR CAR COMPANY, that said instrument was signed on behalf of said company by authority of its Board of Trustees, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

.....  
*Notary Public*

[NOTARIAL SEAL]

My Commission expires

STATE OF MISSOURI, }  
COUNTY OF ST. LOUIS } ss.:

On this       day of September, 1972, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Vice President of MANUFACTURERS RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
*Notary Public*

[NOTARIAL SEAL]

My Commission expires